

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$404.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On December 10, 2015 appellant, then a 67-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2015 she sustained an injury to her lower back and left leg when she picked up a bag from a roller and turned to take the bag to a table while in the performance of duty.<sup>2</sup> Her retirement coverage was listed as under the Federal Employees Retirement System (FERS). OWCP initially accepted the claim for lumbosacral radiculopathy, and later expanded acceptance of the claim to include lumbar intervertebral disc displacement and degeneration.

Appellant filed claims for compensation (Form CA-7) for leave without pay for four hours of disability per day while she worked four hours per day from February 28, 2016 through January 3, 2017. She underwent a laminectomy at L4-5 and L5-S1 on January 6, 2017. Appellant stopped work on January 6, 2017, returning to work at four hours per day on March 5, 2017. OWCP placed her on the periodic rolls for wage-loss compensation from February 5 through March 4, 2017. It paid appellant wage-loss compensation on the supplemental rolls for four hours per day from March 5 through June 24, 2017. On June 9, 2017 the employing establishment notified OWCP that it could not accommodate her work restrictions and requested that she be referred to vocational rehabilitation. OWCP again placed appellant on the periodic rolls for wage-loss compensation as of June 25, 2017. Appellant was working full time at the time of her separation from the employing establishment, which was effective October 13, 2017.

In a Form EN1032 dated October 6, 2017, appellant indicated that she did not receive SSA benefits as part of an annuity for federal service. However, she further noted that she received over age 62 Social Security benefits. In an undated EN1032 form, received on September 25, 2018 appellant indicated that she received SSA benefits as part of an annuity for federal service in the monthly amount of \$1,100.00. She continued to indicate receipt of SSA benefits as part of an annuity for federal service in a Form EN1032 dated October 9, 2018.

On March 6, 2019 OWCP received a completed FERS/SSA dual benefits calculation form from SSA, wherein SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from January 2014 through December 2018. Beginning January 2014, the SSA rate with FERS was \$1,067.20 and without FERS was \$655.00. Beginning December 2014 through December 2015, the SSA rate with FERS was \$1,085.30 and without FERS was \$666.10. Beginning December 2016, the SSA rate with FERS was \$1,088.50 and without FERS was \$688.00. Beginning December 2017, the SSA rate with FERS was \$1,110.20 and without FERS was \$681.30. Beginning December 2018, the SSA rate with FERS was \$1,141.30 and without FERS was \$700.30.

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<sup>2</sup> In September 2010, appellant was eligible to receive age-related retirement benefits from the SSA.

By letter dated April 8, 2019, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her 28-day periodic compensation benefits beginning March 31, 2019.

OWCP completed a FERS offset calculation form on August 21, 2019. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$26,366.95. This form indicated that from January 1 through November 30, 2014 appellant received 334 days of overpayment in the amount of \$4,538.73, from December 1, 2014 through November 30, 2016 she received 731 days of overpayment in the amount of \$10,103.46, from December 1, 2016 through November 30, 2017 she received 365 days of overpayment in the amount of \$4,819.20, from December 1, 2017 through November 30, 2018 she received 365 days of overpayment in the amount of \$5,160.94, and from December 1, 2018 through March 30, 2019 she received 120 days of overpayment in the amount of \$1,744.62.

On August 21, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$26,366.95 for the period January 1, 2014 through March 30, 2019 because the SSA/FERS offset was not applied to payments for this period. It determined that she was without fault in the creation of the overpayment because she relied on misinformation given in writing by OWCP as to the interpretation of FECA or its regulations, there was documentation to substantiate that the misinformation was communicated to her, and there was no evidence in the case file to demonstrate that she knew or should have known the proper course of action to be followed. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method, and advised her that she could request a waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. It further notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. No response was received.

By decision dated September 26, 2019, OWCP determined that appellant had received an overpayment of compensation in the amount of \$26,366.95 because the SSA/FERS offset had not been applied to payments for the period January 1, 2014 through March 30, 2019. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because she had not completed and returned OWCP's Form OWCP-20. OWCP required recovery of the overpayment by determining that the sum of \$250.00 would be withheld from appellant's continuing compensation payments every 28 days beginning October 13, 2019.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Section 8116 limits the right of an employee to receive compensation. While an employee

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<sup>3</sup> 5 U.S.C. § 8102(a).

is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>4</sup>

Section 10.421(d) of FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>5</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that fact of the overpayment without fault has been established. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.<sup>7</sup> The evidence of record does establish that appellant received SSA age-related retirement benefits that were attributable to her own federal service during a period of time that she received FECA wage-loss compensation. The fact of the overpayment is therefore established.

The Board further finds, however, that OWCP improperly determined the amount of the overpayment.

Appellant's accepted employment injury occurred on December 9, 2015. She therefore did not receive wage-loss compensation under FECA in this claim until after her December 9, 2015 employment injury. Furthermore, the record indicates that appellant returned to work during periods of time after December 9, 2015. Consequently, the SSA benefits she received prior to December 9, 2015 and during any period of time during which she returned to full-duty work have not been established to be dual benefits.<sup>8</sup> A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>9</sup> The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of the overpayment has not been established.

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<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>7</sup> *Id.* *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>8</sup> The Board notes that appellant had three prior FECA claims which have not been consolidated with this claim and which are unavailable for review by the Board. The current record does not substantiate that appellant received FECA wage-loss compensation during the period January 1, 2014 through December 9, 2015.

<sup>9</sup> *L.B.*, Docket No. 19-1322 (issued January 27, 2020); *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *J.W.*, Docket No. 15-1163 (issued January 13, 2016); *see also O.R.*, 59 ECAB 432 (2008) with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated).

On remand OWCP shall determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>10</sup>

### **CONCLUSION**

The Board finds that although fact of the overpayment for which he was not at fault has been established, the case is not in posture for decision regarding the amount of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 10, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> Given the disposition of issue 1, the issues of waiver and recovery of the overpayment are moot.